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HOUSE BILL 399

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

R. David Pederson

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

RELATING TO MOTOR VEHICLES; PROHIBITING DISTRICT ATTORNEYS FROM ENTERING INTO AGREEMENTS THAT LIMIT THE AUTHORITY OF THE TAXATION AND REVENUE DEPARTMENT TO REVOKE A PERSON'S DRIVER'S LICENSE WHEN THE PERSON HAS A PRIOR CONVICTION FOR DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; CLARIFYING DEFINED TERMS IN THE MOTOR VEHICLE CODE; CLARIFYING THE DISTINCTION BETWEEN SUSPENDING OR REVOKING A PERSON'S DRIVER'S LICENSE; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 36-1-22 NMSA 1978 (being Laws 1875-1876, Chapter 5, Section 1, as amended) is amended to read:

"36-1-22. POWERS--COMPROMISES--RELEASES. -- [SEC. 7.]

A. The attorney general and district attorneys [of

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1 ~~this State in their respective districts~~], when any civil
2 proceedings [~~may be~~] are pending in district court in their
3 respective districts [~~in the district court~~] in which the
4 state or any county may be a party, whether [~~the same be~~] it
5 is an ordinary suit, scire fascias proceedings, proceedings
6 growing out of any criminal prosecution or otherwise, [~~shall~~]
7 have power to compromise or settle [~~said~~] the suit or
8 proceedings, or grant a release or enter satisfaction in whole
9 or in part, of any claim or judgment in the name of the state
10 or county, or dismiss the same, or take any other steps or
11 proceedings [~~therein~~] which [~~to him may~~] appear to him proper
12 and right [~~and~~]. All such civil suits and proceedings shall
13 be entirely under the management and control of the [~~said~~]
14 attorney general or district attorneys, and all compromises,
15 releases and satisfactions [~~heretofore~~] made or entered into
16 by said officers prior to July 1, 1999 are [~~hereby~~] confirmed
17 and ratified.

18 B. Notwithstanding the provisions of Subsection A
19 of this section, a district attorney shall not enter into an
20 agreement in a civil or criminal case that limits the
21 authority of the taxation and revenue department to revoke or
22 suspend a person's driver's license when that person has a
23 valid, prior conviction under state law, federal law, a county
24 ordinance or a municipal ordinance for driving a motor vehicle
25 while under the influence of intoxicating liquor or drugs. "

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1 Section 2. Section 66-1-4.3 NMSA 1978 (being Laws 1990,
2 Chapter 120, Section 4, as amended) is amended to read:

3 "66-1-4.3. DEFINITIONS. --As used in the Motor Vehicle
4 Code:

5 A. "camping body" means a vehicle body primarily
6 designed or converted for use as temporary living quarters for
7 recreational, camping or travel activities;

8 B. "camping trailer" means a camping body that
9 exceeds neither eight feet in width nor forty feet in length,
10 mounted on a chassis, or frame with wheels, designed to be
11 drawn by another vehicle and that has collapsible partial side
12 walls that fold for towing and unfold at the campsite;

13 C. "cancellation" means that a driver's license is
14 annulled and terminated because of some error or defect or
15 because the licensee is no longer entitled to the license, but
16 cancellation of a license is without prejudice, and
17 application for a new license may be made at any time after
18 cancellation;

19 D. "casual sale" means the sale of a motor vehicle
20 by the registered owner of the vehicle if the owner has not
21 sold more than four vehicles in that calendar year;

22 E. "chassis" means the complete motor vehicle,
23 including standard factory equipment, exclusive of the body
24 and cab;

25 F. "collector" means a person who is the owner of

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1 one or more vehicles of historic or special interest who
2 collects, purchases, acquires, trades or disposes of these
3 vehicles or parts thereof for the person's own use in order to
4 preserve, restore and maintain a similar vehicle for hobby
5 purposes;

6 G. "combination" means any connected assemblage
7 of a motor vehicle and one or more semitrailers, trailers or
8 semitrailers converted to trailers by means of a converter
9 gear;

10 H. "combination gross vehicle weight" means the
11 sum total of the gross vehicle weights of all units of a
12 combination;

13 I. "commerce" means the transportation of
14 persons, property or merchandise for hire, compensation,
15 profit or in the furtherance of a commercial enterprise in
16 this state or between New Mexico and a place outside New
17 Mexico, including a place outside the United States;

18 J. "commercial motor vehicle" means a motor
19 vehicle used in commerce:

20 (1) if the vehicle has a declared gross
21 vehicle weight rating of twenty-six thousand one or more
22 pounds;

23 (2) if the vehicle is designed to transport
24 sixteen or more passengers, including the driver; or

25 (3) if the vehicle is transporting hazardous

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1 materials and is required to be placarded pursuant to
2 applicable law;

3 K. "controlled-access highway" means every
4 highway, street or roadway in respect to which owners or
5 occupants of abutting lands and other persons have no legal
6 right of access to or from the highway, street or roadway
7 except at those points only and in the manner as may be
8 determined by the public authority having jurisdiction over
9 the highway, street or roadway;

10 L. "controlled substance" means any substance
11 defined in Section 30-31-2 NMSA 1978 as a controlled
12 substance;

13 M. "converter gear" means any assemblage of one
14 or more axles with a fifth wheel mounted thereon, designed for
15 use in a combination to support the front end of a semitrailer
16 but not permanently attached thereto. A converter gear shall
17 not be considered a vehicle, as that term is defined in
18 Section 66-1-4.19 NMSA 1978, but weight attributable thereto
19 shall be included in declared gross weight;

20 N. "conviction" means ~~[the alleged violator has~~
21 ~~entered a plea of guilty or nolo contendere or has been found~~
22 ~~guilty in the trial court and has waived or exhausted all~~
23 ~~rights to an appeal]~~ an adjudication of guilt and does not
24 include imposition of a sentence;

25 O. "crosswalk" means:

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1 (1) that part of a roadway at an intersection
2 included within the connections of the lateral lines of the
3 sidewalks on opposite sides of the highway measured from the
4 curbs or, in the absence of curbs, from the edges of the
5 traversable roadway; and

6 (2) any portion of a roadway at an
7 intersection or elsewhere distinctly indicated for pedestrian
8 crossing by lines or other markings on the surface; and

9 P. "curb cut" means a short ramp through a curb
10 or built up to the curb."

11 Section 3. Section 66-1-4.6 NMSA 1978 (being Laws 1990,
12 Chapter 120, Section 7, as amended) is amended to read:

13 "66-1-4.6. DEFINITIONS. --As used in the Motor Vehicle
14 Code:

15 A. "farm tractor" means every motor vehicle
16 designed and used primarily as a farm implement for drawing
17 plows, mowing machines and other implements of husbandry;

18 B. "farm vehicle" means a vehicle used primarily
19 for the transportation of:

20 (1) farm and ranch products to market; or

21 (2) farm and ranch supplies or livestock from
22 the place of purchase to a farm or ranch in this state;

23 ~~[B.]~~ C. "financial responsibility" means the
24 ability to respond in damages for liability resulting from
25 traffic accidents arising out of the ownership, maintenance or

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1 use of a motor vehicle of a type subject to registration under
2 the laws of New Mexico, in amounts not less than specified in
3 the Mandatory Financial Responsibility Act or having in effect
4 a motor vehicle insurance policy. "Financial responsibility"
5 includes a motor vehicle insurance policy, a surety bond or
6 evidence of a sufficient cash deposit with the state
7 treasurer;

8 [C.] D. "first offender" means a person who [for
9 ~~the first time under~~] pursuant to state or federal law or
10 county or municipal ordinance has been adjudicated guilty of
11 the charge of driving a motor vehicle while under the
12 influence of intoxicating liquor or [any other drug that
13 renders the person incapable of safely driving a motor
14 vehicle] drugs or aggravated driving while under the influence
15 of intoxicating liquor or drugs, regardless of whether the
16 person's sentence was suspended or deferred and who, within
17 twenty years previous to the date of the offense for which the
18 person has been adjudicated guilty, had not been convicted of
19 either:

20 (1) driving a motor vehicle while under the
21 influence of intoxicating liquor or drugs; or

22 (2) aggravated driving while under the
23 influence of intoxicating liquor or drugs;

24 [D.] E. "flammable liquid" means any liquid that
25 has a flash point of seventy degrees Fahrenheit or less, as

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1 determined by a tagliabue or equivalent closed-cup test
2 device;

3 ~~[E-]~~ F. "foreign jurisdiction" means any
4 jurisdiction other than a state of the United States or the
5 District of Columbia;

6 ~~[F-]~~ G. "foreign vehicle" means every vehicle of a
7 type required to be registered under the provisions of the
8 Motor Vehicle Code brought into this state from another state,
9 territory or country; and

10 ~~[G-]~~ H. "freight trailer" means any trailer,
11 semitrailer or pole trailer drawn by a truck tractor or road
12 tractor, and any trailer, semitrailer or pole trailer drawn by
13 a truck that has a gross vehicle weight of more than
14 twenty-six thousand pounds, but "freight trailer" does not
15 include manufactured homes, trailers of less than one-ton
16 carrying capacity used to transport animals or fertilizer
17 trailers of less than three thousand five hundred pounds empty
18 weight. "

19 Section 4. Section 66-1-4.16 NMSA 1978 (being Laws 1990,
20 Chapter 120, Section 17, as amended) is amended to read:

21 "66-1-4.16. DEFINITIONS. --As used in the Motor Vehicle
22 Code:

23 A. "safety glazing materials" means glazing
24 materials so constructed, treated or combined with other
25 materials as to reduce substantially, in comparison with

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1 ordinary sheet glass or plate glass, the likelihood of injury
2 to persons by objects from exterior sources or by these safety
3 glazing materials when they are cracked and broken;

4 B. "safety zone" means the area or space
5 officially set apart within a highway for the exclusive use of
6 pedestrians and which is protected or is so marked or
7 indicated by adequate signs as to be plainly visible at all
8 times while set apart as a safety zone;

9 C. "school bus" means any motor vehicle operating
10 under the authority of the state board of education or private
11 school or parochial school interests that is used to transport
12 children, students or teachers to and from schools or to and
13 from any school activity, but not including any vehicle:

14 (1) operated by a common carrier, subject to
15 and meeting all requirements of the [~~state corporation~~
16 ~~commission~~] public regulation commission but not used
17 exclusively for the transportation of pupils;

18 (2) operated solely by a government-owned
19 transit authority, if the [~~transit authority~~] vehicle meets
20 all safety requirements of the [~~state corporation commission~~]
21 public regulation commission but is not used exclusively for
22 the transportation of pupils; [or]

23 (3) operated as a per capita feeder as
24 [~~defined~~] provided in Section 22-16-6 NMSA 1978; or

25 (4) that is a passenger car;

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1 D. "seal" means the official seal of the taxation
2 and revenue department as designated by the secretary;

3 E. "secretary" means the secretary of taxation and
4 revenue, and, except for the purposes of Sections 66-2-3
5 [~~66-2-3.1~~] and 66-2-12 NMSA 1978, also includes the deputy
6 secretary and any division director delegated by the
7 secretary;

8 F. "semitrailer" means any vehicle without motive
9 power, other than a pole trailer, designed for carrying
10 persons or property and for being drawn by a motor vehicle and
11 so constructed that some significant part of its weight and
12 that of its load rests upon or is carried by another vehicle;

13 G. "sidewalk" means that portion of street between
14 the curb lines, or the lateral lines of a roadway, and the
15 adjacent property lines, intended for the use of pedestrians;

16 H. "slow-moving vehicle" means any vehicle that is
17 ordinarily moved, operated or driven at a speed less than
18 twenty-five miles per hour;

19 I. "solid tire" means every tire of rubber or
20 other resilient material that does not depend upon compressed
21 air for the support of the load;

22 J. "special mobile equipment" means every vehicle
23 not designed or used primarily for the transportation of
24 persons or property and incidentally operated or moved over
25 the highways, including but not limited to farm tractors, road

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1 construction or maintenance machinery, earth moving equipment,
2 ditch-digging apparatus, well-boring apparatus and [~~concrete~~
3 ~~mixers~~] wheeled equipment;

4 K. "specially-constructed vehicle" means every
5 vehicle of a type required to be registered under the Motor
6 Vehicle Code not originally constructed under a distinctive
7 name, make, model or type by a generally recognized
8 manufacturer of vehicles and not materially altered from its
9 original construction;

10 L. "state" means any state, territory or
11 possession of the United States, the District of Columbia,
12 [~~or~~] any province of the Dominion of Canada or any state of
13 the United States of Mexico;

14 M "state highway" means any public highway that
15 has been designated as a state highway by the legislature, the
16 state highway commission or the secretary of highway and
17 transportation;

18 N. "stop", when required, means complete cessation
19 from movement;

20 O. "stop, stopping or standing", when prohibited,
21 means any stopping or standing of a vehicle, whether occupied
22 or not, except when necessary to avoid conflict with other
23 traffic or in compliance with the directions of a police
24 officer or traffic-control sign or signal;

25 P. "street" or "highway" means every way or place

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1 generally open to the use of the public as a matter of right
2 for the purpose of vehicular travel, even though it may be
3 temporarily closed or restricted for the purpose of
4 construction, maintenance, repair or reconstruction;

5 Q. "subsequent offender" means a person who [was
6 ~~previously a first offender and who again, under~~] pursuant to
7 state law, federal law or a county or municipal ordinance, has
8 been adjudicated guilty of the charge of driving a motor
9 vehicle while under the influence of intoxicating liquor or
10 ~~[any drug which rendered him incapable of safely driving a~~
11 ~~motor vehicle, regardless of whether the person's sentence was~~
12 ~~suspended or deferred]~~ drugs or aggravated driving while under
13 the influence of intoxicating liquor or drugs and who, within
14 twenty years previous to the date of the offense for which the
15 person has been adjudicated guilty, had previously been
16 convicted, regardless of whether the sentence was suspended or
17 deferred, of either:

18 (1) driving a motor vehicle while under the
19 influence of intoxicating liquor or drugs; or

20 (2) aggravated driving while under the
21 influence of intoxicating liquor or drugs; and

22 R. "suspension" means that a person's driver's
23 license and privilege to drive a motor vehicle on the public
24 highways are temporarily withdrawn. "

25 Section 5. Section 66-1-4.17 NMSA 1978 (being Laws 1990,

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1 Chapter 120, Section 18, as amended) is amended to read:

2 "66-1-4.17. DEFINITIONS.--As used in the Motor Vehicle
3 Code:

4 A. "tank vehicle" means a motor vehicle that is
5 designed to transport any liquid or gaseous material within a
6 tank that is either permanently or temporarily attached to the
7 vehicle or the chassis and that has either a gross vehicle
8 weight rating of twenty-six thousand one or more pounds or is
9 used in the transportation of hazardous materials requiring
10 placarding of the vehicle under applicable law;

11 B. "taxicab" means a motor vehicle used for hire
12 in the transportation of persons, having a normal seating
13 capacity of not more than seven persons;

14 C. "through highway" means every highway or
15 portion thereof at the entrance to which vehicular traffic
16 from intersecting highways is required by law to stop before
17 entering or crossing it when stop signs are erected as
18 provided in the Motor Vehicle Code;

19 D. "trailer" means any vehicle without motive
20 power, designed for carrying persons or property and for being
21 drawn by a motor vehicle, and so constructed that no
22 significant part of its weight rests upon the towing vehicle;

23 E. "traffic" means pedestrians, ridden or herded
24 animals, vehicles and other conveyances either singly or
25 together using any highway for purposes of travel;

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1 F. "traffic-control signal" means any device,
2 whether manually, electrically or mechanically operated, by
3 which traffic is alternately directed to stop and to proceed;

4 G. "traffic safety bureau" means the traffic
5 safety bureau of the state highway and transportation
6 department;

7 [~~G.~~] H. "transporter of manufactured homes" means
8 a commercial motor vehicle operation engaged in the business
9 of transporting manufactured homes from the manufacturer's
10 location to the first dealer's location. A "transporter of
11 manufactured homes" may or may not be associated with or
12 affiliated with a particular manufacturer or dealer;

13 [~~H.~~] I. "travel trailer" means a trailer that
14 exceeds neither a width of eight feet nor a length of forty
15 feet, when equipped for the road, and includes recreational
16 travel trailers and camping trailers;

17 [~~I.~~] J. "trial court" means the magistrate,
18 metropolitan, municipal or district court that tries the case
19 concerning an alleged violation of a provision of the Motor
20 Vehicle Code;

21 [~~J.~~] K. "truck" means every motor vehicle
22 designed, used or maintained primarily for the transportation
23 of property;

24 [~~K.~~] L. "truck camper" means a camping body
25 designed to be loaded onto, or affixed to, the bed or chassis

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1 of a truck. This camping body, when combined with a truck or
2 truck cab and chassis, even though not attached permanently,
3 becomes a part of the motor vehicle and together they are a
4 recreational unit to be known as a "truck camper"; there are
5 three general types of truck campers:

6 (1) "slide-in camper" means a camping body
7 designed to be loaded onto and unloaded from the bed of a
8 pickup truck;

9 (2) "chassis-mount camper" means a camping
10 body designed to be affixed to a truck cab and chassis; and

11 (3) "pickup cover" or "camper shell" means a
12 camping body designed to provide an all-weather protective
13 enclosure over the bed of a pickup truck and to be affixed
14 thereto; and

15 [~~E.~~] M "truck tractor" means every motor vehicle
16 designed and used primarily for drawing other vehicles and not
17 so constructed as to carry a load other than a part of the
18 weight of the vehicle and load so drawn. "

19 Section 6. A new section of the Motor Vehicle Code,
20 Section 66-2-18 NMSA 1978, is enacted to read:

21 "66-2-18. [NEW MATERIAL] SUBJECT MATTER OF PARENTAL
22 RESPONSIBILITY ACT HEARINGS. --Any hearing conducted pursuant
23 to the provisions of Section 66-2-17 NMSA 1978 regarding the
24 denial, refusal to renew, suspension or revocation of a
25 driver's license and privilege to drive on the grounds

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1 specified in the Parental Responsibility Act shall be limited
2 to the following issues:

3 A. whether the identity of the person whose
4 driver's license is proposed to be suspended or revoked is the
5 same as the person whose name appeared on the certified list
6 of obligors provided the department pursuant to Section
7 40-5A-7 NMSA 1978; and

8 B. whether the licensee can provide the department
9 with a certified statement from the human services department
10 that the licensee is in compliance with a judgment and order
11 for support and subpoenas and warrants relating to paternity
12 or child support proceedings pursuant to the Parental
13 Responsibility Act. "

14 Section 7. Section 66-5-5 NMSA 1978 (being Laws 1978,
15 Chapter 35, Section 227, as amended) is amended to read:

16 "66-5-5. PERSONS NOT TO BE LICENSED. -- The [~~division~~]
17 department shall not issue a driver's license under the Motor
18 Vehicle Code to any person:

19 A. who is under the age of sixteen years, except
20 the [~~division~~] department may, in its discretion, issue:

21 (1) a restricted instruction permit or a
22 restricted driver's license to students fourteen years of age
23 or over, enrolled in and attending a driver-education course
24 that includes a DWI education and prevention component
25 approved by the traffic safety bureau or offered by a public

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1 school;

2 (2) a driver's license to any person fifteen
3 years of age or older who has satisfactorily completed a
4 driver-education course that is approved by the traffic safety
5 bureau or offered by a public school and that includes both a
6 DWI education and prevention component and practice driving;
7 and

8 (3) to any person thirteen years of age or
9 older who passes an examination prescribed by the [~~division~~]
10 department, a driver's license restricted to the operation of
11 a motorcycle, provided:

12 (a) the motor is not in excess of one
13 hundred cubic centimeters displacement;

14 (b) no holder of [~~an initial~~] a
15 driver's license authorized pursuant to the provisions of this
16 paragraph may carry any other passenger while driving a
17 motorcycle; and

18 (c) the [~~director approves and~~
19 ~~certifies motorcycles as not in excess of one hundred cubic~~
20 ~~centimeters displacement and by regulation~~] department
21 provides for a method of identification of [~~such~~] motorcycles
22 that have motors not in excess of one hundred cubic
23 centimeters by all law enforcement officers;

24 B. whose driver's license or driving privilege has
25 been suspended [~~or denied~~] during the period of suspension [~~or~~

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1 ~~denial, or to any person whose license has been revoked],~~
2 except as provided in Section 66-5-32 NMSA 1978;

3 C. who is an habitual drunkard, an habitual user
4 of narcotic drugs or an habitual user of any drug to a degree
5 which renders him incapable of safely driving a motor vehicle;

6 ~~[D. who, within any ten-year period, is three~~
7 ~~times convicted of driving a motor vehicle while under the~~
8 ~~influence of intoxicating liquor or narcotic drug regardless~~
9 ~~of whether the convictions are under the laws or ordinances of~~
10 ~~this state or any municipality or county of this state or~~
11 ~~under the laws or ordinances of any other state, the District~~
12 ~~of Columbia or any governmental subdivision thereof. Ten~~
13 ~~years after being so convicted for the third time, the person~~
14 ~~may apply to any district court of this state for restoration~~
15 ~~of the license, and the court, upon good cause being shown,~~
16 ~~may order restoration of the license applied for; provided~~
17 ~~that the person has not been subsequently convicted of driving~~
18 ~~a motor vehicle while under the influence of intoxicating~~
19 ~~liquor or drug in the ten-year period prior to his request for~~
20 ~~restoration of his license. Upon issuance of the order of~~
21 ~~restoration, a certified copy shall immediately be forwarded~~
22 ~~to the division, and if the person is otherwise qualified for~~
23 ~~the license applied for, the three previous convictions shall~~
24 ~~not prohibit issuance of the license applied for. Should the~~
25 ~~person be subsequently once convicted of driving a motor~~

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1 ~~vehicle while under the influence of intoxicating liquor or~~
2 ~~drug, the division shall revoke his license for five years,~~
3 ~~after which time he may apply for restoration of his license~~
4 ~~as provided in this subsection]~~

5 D. whose driver's license or privilege to drive
6 upon the public highways has been revoked prior to the
7 expiration of the period during which the person is not
8 entitled to make an application for a new driver's license or
9 to make an application for reinstatement of his revoked
10 license;

11 E. who has previously been afflicted with or who
12 is suffering from any mental disability or disease which would
13 render him unable to drive a motor vehicle with safety upon
14 the highways and who has not, at the time of application, been
15 restored to health;

16 F. who is required by the Motor Vehicle Code to
17 take an examination, unless he has successfully passed the
18 examination;

19 G. who is required under the laws of this state to
20 deposit proof of financial responsibility and who has not
21 deposited the proof;

22 H. when the [~~director~~] department has good cause
23 to believe that the operation of a motor vehicle on the
24 highways by the person would be inimical to public safety or
25 welfare; or

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1 I. as a motorcycle driver who is less than
2 eighteen years of age and who has not presented a certificate
3 or other evidence of having successfully completed a
4 motorcycle driver-education program licensed or offered in
5 conformance with [~~regulations~~] rules of the traffic safety
6 bureau. "

7 Section 8. Section 66-5-28 NMSA 1978 (being Laws 1978,
8 Chapter 35, Section 250, as amended) is amended to read:

9 "66-5-28. COURT TO FORWARD LICENSE TO [~~DIVISION--~~
10 ~~DEFINITIONS OF "CONVICTED" AND "CONVICTION"~~] DEPARTMENT. -- [A.]

11 Whenever any person is convicted of any offense for which the
12 Motor Vehicle Code or the New Mexico Commercial Driver's
13 License Act requires [~~mandatory~~] revocation of the driver's
14 license of that person by the [~~division~~] department, the court
15 in which the conviction is had shall [~~require~~] assist the
16 department by requiring the surrender to it of the driver's
17 license or commercial driver's license then held by the person
18 so convicted, and the court shall forward the driver's license
19 or commercial driver's license to the [~~division~~] department,
20 together with the abstract of the conviction.

21 [~~B. For the purposes of Subsection A of this~~
22 ~~section and Sections 66-5-29, 66-8-102 and 66-8-117 NMSA 1978,~~
23 ~~the terms "conviction" and "convicted" mean that the alleged~~
24 ~~violation has entered a plea of guilty or nolo contendere or~~
25 ~~been found guilty in the trial court and has waived or~~

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1 ~~exhausted all of his rights to an appeal. For the purposes of~~
2 ~~any other provisions of the Motor Vehicle Code, the terms~~
3 ~~"conviction" and "convicted" mean a final conviction in the~~
4 ~~trial court. For the purposes of the Motor Vehicle Code, a~~
5 ~~forfeiture of bail or collateral deposited to secure a~~
6 ~~defendant's appearance in court or promise to mail payment on~~
7 ~~a penalty assessment when unvacated is equivalent to a~~
8 ~~conviction.]"~~

9 Section 9. Section 66-5-29 NMSA 1978 (being Laws 1978,
10 Chapter 35, Section 251, as amended by Laws 1993, Chapter 66,
11 Section 4 and also by Laws 1993, Chapter 78, Section 4) is
12 amended to read:

13 "66-5-29. [~~MANDATORY~~] REVOCATION OF LICENSE BY
14 [~~DIVISION~~] DEPARTMENT. --

15 A. The [~~division~~] department shall immediately
16 revoke the license of any driver upon receiving a record of
17 the driver's adjudication as a delinquent for or conviction of
18 any of the following offenses, whether the offense is under
19 any state law or local ordinance, when the department is
20 notified that the conviction or adjudication has become final:

- 21 (1) manslaughter or negligent homicide
22 resulting from the operation of a motor vehicle;
- 23 (2) shooting at or from a motor vehicle, as
24 provided in Section 30-3-8 NMSA 1978, or conspiring to or
25 attempting to commit shooting at or from a motor vehicle;

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1 [~~(2)~~] (3) any offense rendering a person a
2 "first offender" as defined in the Motor Vehicle Code, if that
3 person does not attend [~~a driver rehabilitation program~~] DWI
4 school pursuant to [~~Subsection H~~] the provisions of Section
5 66-8-102 NMSA 1978;

6 [~~(3)~~] (4) any offense rendering a person a
7 "subsequent offender" as defined in the Motor Vehicle Code;

8 [~~(4)~~] (5) any felony in the commission of
9 which a motor vehicle is used;

10 [~~(5)~~] (6) failure to stop and render aid as
11 required under the laws of this state in the event of a motor
12 vehicle accident resulting in the death or personal injury of
13 another;

14 [~~(6)~~] (7) perjury or the making of a false
15 affidavit or statement under oath to the [~~division~~] department
16 under the Motor Vehicle Code or under any other law relating
17 to the ownership or operation of motor vehicles; or

18 [~~(7)~~] (8) conviction or forfeiture of bail
19 not vacated upon three charges of reckless driving committed
20 within a period of twelve months.

21 B. Any person whose driver's license has been
22 revoked under this section, except as provided in Subsection
23 C, D or E of this section, shall not be entitled to apply for
24 or receive any new driver's license until the expiration of
25 one year from the date of [~~the last application on which the~~

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1 ~~revoked license was surrendered to and received by the~~
2 ~~division, if no appeal is filed, or one year from the date~~
3 ~~that the revocation is final and he has exhausted his rights~~
4 ~~to an appeal]~~ revocation.

5 C. Except as provided in Subsection E of this
6 section, any person who upon adjudication as a delinquent or
7 upon conviction is subject to license revocation under this
8 section for an offense pursuant to which he was also subject
9 to license revocation pursuant to Section 66-8-111 NMSA 1978
10 shall have his driver's license and privilege to drive upon
11 the public highways revoked for that offense for a combined
12 period of time equal to one year.

13 D. Upon receipt of an order from a court pursuant
14 to [~~Subsection J of Section 32-1-34 NMSA 1978 or Subsection G~~
15 ~~of Section 32-1-36 NMSA 1978]~~ Section 32A-2-19 or 32A-2-22
16 NMSA 1978, the [~~division~~] department shall revoke the driver's
17 license or driving privileges for a period of time in
18 accordance with these provisions.

19 [~~E. Upon receipt from a district court of a record~~
20 ~~of conviction for the offense of shooting at or from a motor~~
21 ~~vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978~~
22 ~~or of a conviction for a conspiracy or an attempt to commit~~
23 ~~that offense, the division shall revoke the driver's licenses~~
24 ~~or driving privileges of the convicted person. Any person~~
25 ~~whose license or privilege has been revoked pursuant to the~~

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1 ~~provisions of this subsection shall not be entitled to apply~~
2 ~~for or receive any new license or privilege until the~~
3 ~~expiration of one year from the date of the last application~~
4 ~~on which the revoked license was surrendered to and received~~
5 ~~by the division, if no appeal is filed, or one year from the~~
6 ~~date that the revocation is final and he has exhausted his~~
7 ~~rights to an appeal.]~~

8 E. If a person is adjudicated as a delinquent for
9 or convicted of driving a motor vehicle while under the
10 influence of intoxicating liquor or drugs or aggravated
11 driving under the influence of intoxicating liquor or drugs
12 pursuant to federal law, state law or a municipal or county
13 ordinance for a third time within a ten-year period, the
14 department shall revoke that person's driver's license and
15 driving privileges for ten years. If the person is
16 subsequently adjudicated as a delinquent for or convicted of
17 driving while under the influence of intoxicating liquor or
18 drugs or aggravated driving under the influence of
19 intoxicating liquor or drugs, the department shall revoke his
20 driver's license and driving privileges for an additional five
21 years for each conviction. "

22 Section 10. Section 66-5-30 NMSA 1978 (being Laws 1978,
23 Chapter 35, Section 252, as amended) is amended to read:

24 "66-5-30. AUTHORITY OF [DIVISION] DEPARTMENT TO SUSPEND
25 [~~OR REVOKE~~] LICENSE. --

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1 A. The [~~division~~] department is authorized to
2 suspend [~~the license of a driver~~] a person's driver's license
3 without preliminary hearing upon a showing by its records or
4 other sufficient evidence that the licensee:

5 (1) [~~has been convicted of an offense for~~
6 ~~which mandatory revocation of license is required upon~~
7 ~~conviction~~] has failed to submit to an examination requested
8 by the department pursuant to the provisions of Section
9 66-5-31 NMSA 1978;

10 (2) has been convicted as a driver in any
11 accident resulting in the death or personal injury of another
12 or serious property damage;

13 (3) has been convicted with such frequency of
14 offenses against traffic laws or regulations governing motor
15 vehicles as to indicate a disrespect for traffic laws and a
16 disregard for the safety of other persons on the highways;

17 (4) is an habitually reckless or negligent
18 driver of a motor vehicle;

19 (5) is incompetent to drive a motor vehicle;

20 (6) has permitted an unlawful or fraudulent
21 use of the driver's license;

22 (7) has been convicted of an offense in
23 another state which if committed in this state would be
24 grounds for suspension [~~or revocation~~];

25 (8) has violated provisions stipulated by a

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1 district court in limitation of ~~[certain]~~ the person's driving
2 privileges or has violated restrictions placed on the person's
3 driving privilege by the department;

4 (9) has failed to fulfill a signed promise to
5 appear or notice to appear in court as evidenced by notice
6 from a court, whenever appearance is required by law or by the
7 court as a consequence of any charge or conviction under the
8 Motor Vehicle Code;

9 (10) has failed to pay a penalty assessment
10 within thirty days of the date of issuance; ~~[or]~~

11 (11) has accumulated seven points, but less
12 than ~~[eleven]~~ twelve points, and when the ~~[division]~~
13 department has received a recommendation from a municipal,
14 metropolitan or magistrate judge that the ~~[licensee]~~ person's
15 driver's license be suspended for a period not to exceed three
16 months; or

17 (12) failed to comply with the provisions of
18 Section 66-5-236 NMSA 1978.

19 B. Upon suspending ~~[the license of any person]~~ a
20 person's driver's license as authorized in this section, the
21 ~~[division]~~ department shall immediately notify the licensee in
22 writing. ~~[and upon his request shall afford him an~~
23 ~~opportunity for a hearing as early as practicable within not~~
24 ~~to exceed twenty days, not counting Saturdays, Sundays and~~
25 ~~legal holidays, after receipt of the request in the county~~

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1 ~~wherein the licensee resides unless the division and the~~
2 ~~licensee agree that the hearing may be held in some other~~
3 ~~county; provided that the hearing request is received within~~
4 ~~twenty days from the date that the suspension was deposited in~~
5 ~~the United States mail. The director may, in his discretion,~~
6 ~~extend the twenty-day period. Upon the hearing, the director~~
7 ~~or his duly authorized agent may administer oaths and may~~
8 ~~issue subpoenas for the attendance of witnesses and the~~
9 ~~production of relevant books and papers and may require a~~
10 ~~reexamination of the licensee. Upon the hearing, the division~~
11 ~~shall either rescind its order of suspension or, good cause~~
12 ~~appearing therefor, may continue, modify or extend the~~
13 ~~suspension of the license or revoke the license.] The~~
14 ~~licensee may file a protest of the suspension of his driver's~~
15 ~~license pursuant to the provisions of Section 66-2-17 NMSA~~
16 ~~1978.~~ "

17 Section 11. Section 66-5-32 NMSA 1978 (being Laws 1978,
18 Chapter 35, Section 254, as amended) is amended to read:

19 "66-5-32. PERIOD OF SUSPENSION [~~OR REVOCATION~~]. - -

20 A. The [~~division~~] department shall not suspend a
21 driver's license or privilege to drive a motor vehicle on the
22 public highways for a period of more than one year except as
23 permitted [~~under Subsection C of~~] pursuant to this section,
24 [~~and Sections 66-5-5 and~~] Section 66-5-39 NMSA 1978 or the
25 Parental Responsibility Act.

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1 ~~[B. Any person whose license or privilege to drive~~
2 ~~a motor vehicle on the public highways has been revoked shall~~
3 ~~not be entitled to have the license or privilege renewed or~~
4 ~~restored unless the revocation was for a cause that has been~~
5 ~~removed, except that after the expiration of the period~~
6 ~~specified in Subsection B of Section 66-5-29 NMSA 1978 from~~
7 ~~the date on which the revoked license was surrendered to and~~
8 ~~received by the division, the person may make application for~~
9 ~~a new license as provided by law.~~

10 ~~C.]~~ B. The suspension period for failure to appear
11 or failure to remit the penalty assessment shall, at the
12 discretion of the ~~[director]~~ secretary, be extended
13 indefinitely subject to the provisions of Subsection B of
14 Section 66-5-30 NMSA 1978. "

15 Section 12. Section 66-8-102 NMSA 1978 (being Laws 1953,
16 Chapter 139, Section 54, as amended by Laws 1997, Chapter 43,
17 Section 1 and also by Laws 1997, Chapter 205, Section 1) is
18 amended to read:

19 "66-8-102. PERSONS UNDER INFLUENCE OF INTOXICATING
20 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
21 OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

22 A. It is unlawful for any person who is under the
23 influence of intoxicating liquor to drive any vehicle within
24 this state.

25 B. It is unlawful for any person who is under the

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1 influence of any drug to a degree that renders him incapable
2 of safely driving a vehicle to drive any vehicle within this
3 state.

4 C. It is unlawful for any person who has an
5 alcohol concentration of eight one-hundredths or more in his
6 blood or breath to drive any vehicle within this state.

7 D. Aggravated driving while under the influence of
8 intoxicating liquor or drugs consists of a person who:

9 (1) has an alcohol concentration of sixteen
10 one-hundredths or more in his blood or breath while driving
11 any vehicle within this state;

12 (2) has caused bodily injury to a human being
13 as a result of the unlawful operation of a motor vehicle while
14 driving under the influence of intoxicating liquor or drugs;
15 or

16 (3) refused to submit to chemical testing, as
17 provided for in the Implied Consent Act, and in the judgment
18 of the court, based upon evidence of intoxication presented to
19 the court, was under the influence of intoxicating liquor or
20 drugs.

21 E. Every person under first conviction under this
22 section shall be punished, notwithstanding the provisions of
23 Section 31-18-13 NMSA 1978, by imprisonment for not more than
24 ninety days or by a fine of not more than five hundred dollars
25 (\$500), or both; provided that if the sentence is suspended in

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1 whole or in part or deferred, the period of probation may
2 extend beyond ninety days but shall not exceed one year. Upon
3 a first conviction under this section, an offender may be
4 sentenced to not less than forty-eight hours of community
5 service or a fine of three hundred dollars (\$300). The
6 offender shall be ordered by the court to participate in and
7 complete a screening program described in Subsection H of this
8 section and to attend a driver rehabilitation program for
9 alcohol or drugs, also known as a "DWI school", approved by
10 the traffic safety bureau of the state highway and
11 transportation department and also may be required to
12 participate in other rehabilitative services as the court
13 shall determine to be necessary. In addition to those
14 penalties, when an offender commits aggravated driving while
15 under the influence of intoxicating liquor or drugs, the
16 offender shall be sentenced to not less than forty-eight
17 consecutive hours in jail. If an offender fails to complete,
18 within a time specified by the court, any community service,
19 screening program, treatment program or DWI school ordered by
20 the court, the offender shall be sentenced to not less than an
21 additional forty-eight consecutive hours in jail. Any jail
22 sentence imposed under this subsection for failure to
23 complete, within a time specified by the court, any community
24 service, screening program, treatment program or DWI school
25 ordered by the court or for aggravated driving while under the

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1 influence of intoxicating liquor or drugs shall not be
2 suspended, deferred or taken under advisement. On a first
3 conviction under this section, any time spent in jail for the
4 offense prior to the conviction for that offense shall be
5 credited to any term of imprisonment fixed by the court. A
6 deferred sentence under this subsection shall be considered a
7 first conviction for the purpose of determining subsequent
8 convictions.

9 F. A second or third conviction under this section
10 shall be punished, notwithstanding the provisions of Section
11 31-18-13 NMSA 1978, by imprisonment for not more than three
12 hundred sixty-four days or by a fine of not more than one
13 thousand dollars (\$1,000), or both; provided that if the
14 sentence is suspended in whole or in part, the period of
15 probation may extend beyond one year but shall not exceed five
16 years. Notwithstanding any provision of law to the contrary
17 for suspension or deferment of execution of a sentence:

18 (1) upon a second conviction, each offender
19 shall be sentenced to a jail term of not less than seventy-two
20 consecutive hours, forty-eight hours of community service and
21 a fine of five hundred dollars (\$500). In addition to those
22 penalties, when an offender commits aggravated driving while
23 under the influence of intoxicating liquor or drugs, the
24 offender shall be sentenced to a jail term of not less than
25 ninety-six consecutive hours. If an offender fails to

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1 complete, within a time specified by the court, any community
2 service, screening program or treatment program ordered by the
3 court, the offender shall be sentenced to not less than an
4 additional seven consecutive days in jail. A penalty imposed
5 pursuant to this paragraph shall not be suspended or deferred
6 or taken under advisement; and

7 (2) upon a third conviction, an offender
8 shall be sentenced to a jail term of not less than thirty
9 consecutive days and a fine of seven hundred fifty dollars
10 (\$750). In addition to those penalties, when an offender
11 commits aggravated driving while under the influence of
12 intoxicating liquor or drugs, the offender shall be sentenced
13 to a jail term of not less than sixty consecutive days. If an
14 offender fails to complete, within a time specified by the
15 court, any screening program or treatment program ordered by
16 the court, the offender shall be sentenced to not less than an
17 additional sixty consecutive days in jail. A penalty imposed
18 pursuant to this paragraph shall not be suspended or deferred
19 or taken under advisement.

20 G. Upon a fourth or subsequent conviction under
21 this section, an offender is guilty of a fourth degree felony,
22 as provided in Section 31-18-15 NMSA 1978, and shall be
23 sentenced to a jail term of not less than six months, which
24 shall not be suspended or deferred or taken under advisement.

25 H. Upon any conviction under this section, an

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1 offender shall be required to participate in and complete,
2 within a time specified by the court, an alcohol or drug abuse
3 screening program and, if necessary, a treatment program
4 approved by the court. The penalty imposed pursuant to this
5 subsection shall not be suspended, deferred or taken under
6 advisement.

7 I. In the case of a first, second or third offense
8 under this section, the magistrate court has concurrent
9 jurisdiction with district courts to try the offender.

10 J. A conviction under a municipal or county
11 ordinance in New Mexico or a law of any other jurisdiction,
12 territory or possession of the United States that is
13 equivalent to New Mexico law for driving while under the
14 influence of intoxicating liquor or drugs, [~~prescribing~~] and
15 prescribes penalties for driving while under the influence of
16 intoxicating liquor or drugs shall be deemed to be a
17 conviction under this section for purposes of determining
18 whether a conviction is a second or subsequent conviction.

19 K. In addition to any other fine or fee which may
20 be imposed pursuant to the conviction or other disposition of
21 the offense under this section, the court may order the
22 offender to pay the costs of any court-ordered screening and
23 treatment programs.

24 L. As used in this section, [~~(1)~~] "bodily injury"
25 means an injury to a person that is not likely to cause death

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1 or great bodily harm to the person, but does cause painful
2 temporary disfigurement or temporary loss or impairment of the
3 functions of any member or organ of the person's body [and
4 ~~(2) "conviction" means an adjudication of~~
5 ~~guilt and does not include imposition of a sentence]. "~~

6 Section 13. Section 66-8-135 NMSA 1978 (being Laws 1978,
7 Chapter 35, Section 543, as amended) is amended to read:

8 "66-8-135. RECORD OF TRAFFIC CASES. --

9 A. Every trial court judge shall keep a record of
10 every traffic complaint, uniform traffic citation and other
11 form of traffic charge filed in the judge's court or its
12 traffic violations bureau and every official action and
13 disposition of the charge by that court.

14 B. Within ten days of the later of entry of
15 judgment and sentence or failure to appear on a charge of
16 violating the Motor Vehicle Code or other law or ordinance
17 relating to motor vehicles or the final decision of any higher
18 court that reviews the matter and from which no appeal or
19 review is successfully taken, every trial court judge,
20 including children's court judges, or the clerk of the court
21 in which the entry of judgment and sentence or failure to
22 appear occurred shall prepare and forward to the department an
23 abstract of the record containing:

- 24 (1) the name and address of the defendant;
- 25 (2) the specific section number and common

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1 name of the provision of the NMSA 1978 or local law, ordinance
2 or regulation under which the defendant was tried;

3 (3) the plea, finding of the court and
4 disposition of the charge, including fine or jail sentence or
5 both, forfeiture of bail or dismissal of the charge;

6 (4) an itemization of costs assessed to the
7 defendant;

8 (5) the date of the hearing;

9 (6) the court's name and address; and

10 [~~(7) whether the defendant was a first or~~
11 ~~subsequent offender; and~~

12 ~~(8)] (7) whether the defendant was~~

13 represented by counsel or waived his right to counsel and, if

14 represented, the name and address of counsel.

15 C. The abstract of record prepared and forwarded

16 under Subsection B of this section shall be certified as

17 correct by the person required to prepare it. With the prior

18 approval of the department, the information required by

19 Subsection B of this section may be transmitted electronically

20 to the department. Report need not be made of any disposition

21 of a charge of illegal parking or standing of a vehicle except

22 when the uniform traffic citation is used.

23 D. When the uniform traffic citation is used, the

24 court shall provide the information required by Subsection B

25 of this section in the manner prescribed by the department.

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1 E. Every court of record shall also forward a like
2 report to the department upon conviction of any person of any
3 felony if a motor vehicle was used in the commission. With
4 the prior approval of the department, the information required
5 by this subsection may be submitted electronically to the
6 department. The report shall be forwarded to the department
7 within ten days of the final decision of the court or of any
8 higher court that reviews the matter and from which the
9 decision of no appeal or review is successfully taken.

10 F. The failure or refusal of any judicial officer
11 to comply with this section is misconduct in office and
12 grounds for removal.

13 G. The department shall keep records received on
14 motorists licensed in this state at its main office. Records
15 showing a record of conviction by a court of law shall be open
16 to public inspection during business hours for three years
17 from the date of their receipt, after which they shall be
18 destroyed by the department except for records of convictions
19 ~~[under]~~ pursuant to Sections 66-8-101 through ~~[66-8-112]~~
20 66-8-104 NMSA 1978 and records of violations of the Implied
21 Consent Act, which may not be destroyed until twenty-five
22 years from the date of their receipt. Any record received on
23 a motorist licensed in another state or country shall be
24 forwarded to the licensing authority of that state or
25 country. "

